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No. 85-1447

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

OCTOBER TERM, 1985

CABRIOLET PORSCHE + AUDI, INC.
Petitioner,

v.

AMERICAN HONDA MOTOR CO., INC.
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1985

CABRIOLET PORSCHE+AUDI, INC.,
a Florida Corporation,
d/b/a CABRIOLET HONDA CAR,

Petitioner,

v.

AMERICAN HONDA MOTOR CO., INC.,
a California Corporation,

Respondent.

PETITIONER'S REPLY

Respondent's Brief in Opposition merely confirms the need for review in this case. This reply is submitted to demonstrate that the arguments it proffers reinforce the conclusion that this case should be reviewed by this Court.

1. Respondent's statement of the case relies upon the findings of fact made by the court of appeals (Br. Op. 2, 3, 4). The central issue in this case is whether the evi-

dence below justified the appellate court's substitution of its findings for those made by the district court which heard and considered the testimony and the other evidence. Respondent makes no attempt to rebut petitioner's statement of the facts shown by that evidence; instead it is "content to rely upon its [the court of appeals] opinion as American Honda's response" (Br. Op. 8-9). If respondent's argument is adequate, then courts of appeals can effectively preclude review by appropriately reciting the litany prescribed by this Court in Anderson v. City of Bessemer City, 105 S.Ct. 1504 (1985). That is precisely what petitioner suggested the court of appeals did in this case (Pet. 34-36, 60-64). That, petitioner suggests, makes it necessary that this Court exercise its supervisory jurisdiction to compare the record and the findings made by the district court with those made by the court of appeals to assure that Anderson is not being so simply evaded.

2. As respondent emphasizes, the court of appeals adhered to its 1975 precedent condemning the practice of district judges who adapt the district court's findings of fact and conclusions of law directly from those proposed by the parties. Br. Op. 3; App. 3 n.2. The court of appeals reaffirmed that precedent, even though it was clear that the district court had critically examined detailed proposed findings and conclusions submitted by each of the parties and had revised petitioner's proposed findings and conclusions in a manner that reduced the award by more than nine million dollars. That court reaffirmed its 1975 precedent in the face of this Court's 1985 decision directly condemning similar precedents in the Fourth Circuit. Anderson, 105 S.Ct. at 1510-11.

The fact that the court below explicitly continued its policy of condemning the use of proposed findings submitted by the parties requires review by this Court. Neither the

bar nor the district courts should be left in doubt about the propriety of this practice. In those districts that must deal with overwhelming caseloads and dockets, the practice is often perceived by district court judges as a necessity. If parties whose counsel seek to aid those courts by submitting detailed and fully supported proposed findings and conclusions may be penalized for their counsels' efforts on appeal, this Court should so declare in order that the practice may be eliminated or revised. On the other hand, if the need to manage heavy criminal and civil dockets in the district courts justify reliance upon this practice, this Court should make it clear that the practice and its products are to be accepted by the courts of appeals absent clear evidence of abuse.

3. Respondent confuses the distinction between those cases in which an appellate court reverses because the evidence is insufficient and those in which it reverses be-

cause the district court's findings, although supported by sufficient evidence, are found to be clearly erroneous or against the manifest weight of the evidence. Each of the decisions proffered by respondent involved a reversal based upon the appellate court's determination that the evidence was insufficient to support the trial court's findings. Br. Op. 5 and cases cited there. In the present case, the court of appeals did not question the sufficiency of the evidence; it chose instead to substitute its inferences for those drawn by the district court. The present case provides the Court with a needed opportunity to clarify the distinction and its application in civil appeals.

In Florida v. Tibbs, 457 U.S. 31 (1982), the Court found the distinction to be controlling for double jeopardy purposes in criminal cases. A defendant whose conviction is reversed on the ground that it was against the manifest weight of the evidence

may be tried; a defendant whose conviction is reversed on the ground that the evidence was insufficient may not.

The Court did not attempt to fully develop the distinction in Tibbs. 457 U.S. at 44-45; see also, id. at 51 (White, J., dissenting); see also, e.g., Comment, The Sufficiency-Weight Distinction -- A Matter of Life and Death, 38 U. Miami L. Rev. 147 (1983) (commenting on Tibbs and reviewing historical and contemporary meanings of the distinction). It was, of course, unnecessary for the Court to discuss the application or significance of that distinction in civil cases. The decision below illustrates the need and provides an appropriate opportunity for this Court to clarify the distinction and its application in civil appeals.

The distinction is specially important in the context of the questions presented here. The decision below represents a departure from settled jurisprudence established under

the federal Automobile Dealer's Day in Court Act, 15 U.S.C. §§ 1221-1225 (1982), Pet. 43-46, as well as a departure from the standard applied in Anderson. The consequences to the proper administration of the Act that flow from that departure provide additional reasons why the Court should grant review here. Pet. at 37-60. Neither respondent nor the court of appeals has addressed these consequences. This Court should.

4. Respondent has not attempted to rebut or substantially address the concerns raised by the decision below and the questions presented here. Instead, it has relied upon misstatements of petitioner's position in the district court (e.g., Br. Op. at 2) and petitioner's arguments here (e.g., id. at 4-6). Those concerns are matters of great consequence to an important sector of the Nation's economy, the distribution of automobiles, and to the economy of one of the Nation's important institutions, the federal

courts. Respondent's silence on those issues merely emphasizes the need for review here.

Accordingly, petitioner submits that the Court should grant the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On April 16, 1986, an envelope containing three copies of Petitioner's Reply addressed to Roland N. Smoot, Lyon & Lyon, 611 West Sixth Street, 34th Floor, Los Angeles, California 90017, and bearing proper evidence that first-class postage had been paid was deposited in a United States Postal facility.

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Paul Marcus